

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

MICHELE ESQUIVEL

APPELLANT,

**v.
HY-VEE, INC. AND DIVISION OF
EMPLOYMENT SECURITY**

RESPONDENTS.

DOCKET NUMBER WD79247
DATE: July 26, 2016

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Division Two: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Attorneys:

Samuel I. McHenry, Kansas City, MO, for appellant.

Ninion S. Riley, Jefferson City, MO, for respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

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APPELLANT,

v.

**HY-VEE, INC. AND DIVISION OF
EMPLOYMENT SECURITY,**

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No. WD79247

Labor and Industrial Relations Commission

Before Division Two: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Michele Esquivel appeals from the Labor and Industrial Relations Commission's order denying her claim for unemployment benefits following her termination from Hy-Vee, Inc. Esquivel argues that the Commission erred in concluding that she committed misconduct and in denying her claim for unemployment benefits, because the decision was not supported by sufficient competent evidence.

AFFIRM.

Division Two holds: Misconduct is defined by section 288.030.1(23)(e) as conduct that is connected with work, which violates an employer's rule, unless the employee demonstrates: that he or she did not know, and could not reasonably know, of the rule's requirements; the rule is not lawful; or the rule is not fairly or consistently enforced. Hy-Vee had a written rule prohibiting the use of profanity in the workplace. Esquivel violated that rule when she used profanity in front of fellow employees and customers. Esquivel did not demonstrate that she did not know the rule's requirements, that the rule was unlawful, or that the rule was inconsistently enforced. Sufficient competent evidence on the record as a whole supports the Commission's finding that Esquivel engaged in misconduct connected with work as defined by section 288.030.1(23)(e).

Opinion by Cynthia L. Martin, Judge

July 26, 2016

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